



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/10/07	Bill No:	<a href="#">AB 1365</a>
Tax:	Sales and Use	Author:	Karnette
Related Bills:			

### BILL SUMMARY

This bill would require the sales and use tax revenues derived from the sale and purchase of works of art, as defined, to be deposited in the State Treasury for allocation to the California Arts Council, as specified.

### ANALYSIS

#### CURRENT LAW

Existing law imposes a sales or use tax on the sale or purchase of tangible personal property in this state, unless specifically exempted. Revenue and Taxation Code Section 6365 provides an exemption from the sales and use tax for sales of original works of art, as defined, purchased by specified governmental entities or nonprofit organizations for display in museums.

Under this section, the term “work of art” is defined to mean a work of visual art, including, but not limited to, a drawing, painting, mural, fresco, sculpture, mosaic, film, or photograph, a work of calligraphy, a work of graphic art (including, but not limited to, an etching, lithograph, offset print, silk screen, or a work of graphic art of like nature), crafts (including, but not limited to, crafts in clay, textile, fiber, wood, metal, plastic, glass, costume, dress, clothing, personal adornment, and like materials), or mixed media (including, but not limited to, a collage, assemblage, or any combination of the foregoing art media). All other sales and purchases of works of art are generally subject to the sales or use tax.

The statewide sales and use tax rate (7.25%) imposed on taxable sales and purchases of tangible personal property is made up of the following components, and the funds are allocated in the specific funds identified (additional district taxes are levied among various local jurisdictions and are not reflected in this chart):

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Rate	Jurisdiction	R & T Code
5.0%	State (General Fund)	6051, 6201, 6051.3, 6201.3
0.25%	State (Fiscal Recovery Fund)	6051.5, 6201.5
0.50%	Local Revenue Fund	6051.2, 6201.2
0.50%	Local Public Safety Fund	§35 Art XIII St. Constitution
1.00%	Local (0.25% County transportation funds 0.75% City and county operations)	7203.1

### PROPOSED LAW

This bill would add Section 7101.2 to the Revenue and Taxation Code to require all revenues, less refunds, derived from the imposition of sales or use tax on sales or purchases of works of art to be deposited in the State Treasury to be allocated to the California Arts Council for purposes of funding the duties imposed on it pursuant to the Government Code.

The bill would define “work of art” by referencing subdivision (c) of Revenue and Taxation Code Section 6365.

The bill would become effective January 1, 2008.

### COMMENTS

- 1. Sponsor and Purpose.** The sponsor of the amendment is the California Arts Council (Council). The purpose of this measure is to provide additional funding for the duties and responsibilities imposed on the Council pursuant to the Government Code, under which the Council was created.
- 2. Only the state sales and use tax revenues would fall under the provisions of this bill.** This bill would only affect the state sales and use tax revenues at the 5.25 percent rate, as changing the allocation of local revenues would be constitutionally prohibited.
- 3. Board does not capture data on works of art.** This bill would essentially require the Board to provide precise information concerning the amount of sales or use tax collected on the sale or purchase of works of art. In order to allocate actual sales and use tax revenues pursuant to the provisions of this bill, it would be necessary to establish a mechanism for identifying taxable revenue attributable to these sales. Taxable sales are reported by retailers on a “gross receipts” basis, with no segregation with respect to the sale of a specific commodity. Since retailers of

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works of art may sell a variety of other products, the information would not be available from tax returns as currently filed.

Consequently, we would have to require retailers to separately account for their sales of works of art. However, the reliability of the data reported would be questionable, since taxpayers selling works of art would be under no economic compulsion to accurately segregate these sales.

4. **The definition of “works of art” is significantly broad when applied to general transactions.** It’s one thing to apply that definition in relation to museum purposes, but in terms of applying the definition in relation to general merchandise for purposes of instructing taxpayers to segregate the taxable sales, it would be profoundly troublesome. Administration of the current limited exemption has even been difficult, as the Board, in many cases, is required to make aesthetic judgments regarding whether or not objects purchased for display at a museum qualify as art. For example, for purposes of the museum exemption, would a Chippendale sideboard constitute a work of art or simply a piece of old furniture? The difficulty in attempting to apply that definition to sales of general merchandise for purposes of allocating the proper amount of sales and use tax would be especially burdensome and would potentially cause significant administrative and taxpayer compliance problems. Obviously standard items such as original paintings, original statues, etc., would be regarded as works of art, but the definition contained in Section 6365 doesn’t even require that the work of art be original. So, virtually any creative items such as candles, frames, photographs, posters, wood carvings, and pottery could arguably fall within the definition.

## **COST ESTIMATE**

Costs would be incurred in establishing guidelines as to what a “work of art” is, educating affected retailers on what items should be separately identified on sales and use tax returns, modifying sales and use tax returns, and programming to capture data reported on the returns. A detailed estimate of the workload impacting return revisions, taxpayer instructions, data entry, verification, programming and return processing is pending.

## **REVENUE ESTIMATE**

As stated in comment 3 on the previous page, the Board does not capture data on sales of works of art. Moreover, the broad definition of “works of art” could include such a broad array of items – virtually any commodity that may have artwork incorporated in the product sold – that we are unable to make an accurate revenue estimate.

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